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We cannot help thinking that too much has been made of the incident arising out of the Advocate-General's Cross-examination of Mr. Weston in Crompton & Co's., case. The complaint against the Advocate-General was that without reasonable grounds or instructions he put a question which imputed forgery to the witness.

It would be interesting to know what was the exact question about which all the fuss has been made.

So far as we can gather, it was this:—

" Q. Can you explain how it comes about that every other " copy you sent to England except H. H. H. does not bear Mr. " Brown's signature ?

A. Mr. Brown's signature was put on it.

Apparently satisfied with this enigmatical reply, the Advocate-General probed the matter no further. The hearing was continued for three or four days and in the course of it Mr. Grant is said to have complained repeatedly to Mr. Justice Wallis that this question contained an imputation of " forgery ". The Advocate-General protested against this interpretation of his question ; he explained to the witness before he left the box that no such imputation was intended, and he dealt with the matter again at the close of the trial, ridiculing it. Mr. Justice Wallis seems to have brushed the complaint aside on each occasion and passed it over in silence in his elaborate judgment.

In opening the appeal the complaint was again brought forward by Mr. Grant. And this time the Advocate-General thought fit to insist upon its being gone into by their Lordships.

In England there is no statute, so far as we know, governing cross-examination but our Evidence Act contains express provisions protecting witnesses on the one hand and Counsel on the other. In this case we should think that Mr. Weston's previous admission that he himself had put the crucial date (27th July 1909) at the foot of the specification coupled with the fact that the signature " M. Brown " was on his copy and not on other

copies, justified the question put to him. It related to what at the time was one of the main issues in the case, namely, the identity of the specification agreed to by the parties; and further the Advocate-General informed the Appellate Court that he had definite instruction that Mr. Brown had never signed any specification and that he was not in India on the 27th July 1909.

Much stress was laid on the fact that this aspect of the case was not afterwards pressed, (the Advocate-General having decided not to call evidence on the point of identification when satisfied by Colonel Clibbon's statement that he had never contemplated agreeing to any specification save one). The question was proper or not *when it was put* and it is difficult to see how subsequent events affect the matter unless of course they are such as tend to show that the question was not put *bona fide*. Some part of the discussion turned upon the degree of respect due to the witness's position—a point upon which opinions might vary, but which we think is not quite relevant.

What their Lordships expressed as their "pious opinion" in the matter must, we think, be regarded as practically extra-judicial. But the respect due to their Lordships' opinion requires that we should take note of it. From what we have so far reason to know the opinion of the profession is not unanimous on the point. With reference to the insistence made on the position of the witness, we should have been glad if their Lordships had drawn pointed attention to the observations of this Court in Mr. Sullivan's case, *Sullivan* v. *Norton* [1]. They are as valuable to-day as 25 years ago, if not more so. If their Lordships' opinion is to be adopted as a guide by the legal Profession, cross-examination as a test of truth will, we apprehend, be seriously crippled. It is too much to suggest that at the end of a case, Counsel must formally withdraw all suggestions or implications (made in the course of cross-examination) that have not been proved. The very idea of being cross-examined may be resented by a superior witness, for cross-examination itself implies that the witness has not spoken, at any rate, "the whole truth," according to his oath. Surely that is not the kind of sensitiveness that the policy of the law takes note of.

1. (1885) I. L. R. 10 M. 28.

Chidambaram Chettiar v. Srinivasa Sastrial 26 M. L. J. 473. We invite the attention of our readers to the decision of the Judicial Committee in *Chidambaram Chettiar* v. *Srinivasa Sastrial* [1]. Their Lordships' Judgment which confirms the decision of the Madras High Court in *Chidambaram Chetti* v. *Sami Iyer* [2] is very short; but it is authoritative as setting at rest some doubts occasionally suggested as to the correctness of the decision of the High Court, though the decision itself has been followed in several cases by this Court as well as by the Calcutta High Court. It may now be taken as settled that the principle underlying section 53 of the Transfer of Property Act (though not the section itself) will apply to *movable* property: and that an alienation of the kind described in S. 53 will not be protected merely on the ground of its being one for consideration; it must also be one obtained in good faith. Of course, the onus of proving good faith may be lighter where the transfer is for consideration. (*Vide* I. L. R. 33 M. at p. 338 quoting from 5 Bom. L. R. 142) but there is no difference in principle. The decision under notice must also be regarded as settling that where the fraudulent alienation is by way of *sale*, it cannot be upheld in part, *i.e.*, to the extent to which there is consideration or the consideration has been properly applied. Where however the alienation is by way of mortgage, the question presents greater diffculty and amidst the existing divergence of judicial opinion on the point (see 24 M. L. J. 266 and the cases cited therein) it cannot be said that the decision of the Judicial Committee with reference to a sale will necessarily apply to a *mortgage* as well. One other point is adverted to in their Lordships' judgment *viz.*, the rights of the transferee (otherwise than under the transfer) on the basis of his having applied part of the consideration to pay off binding debts, but their Lordships decline to express any opinion in the matter. Reference may be made in this connection to *Palamalai Mudaliar* v. *S. I. Export Co.* [3] where the court allowed the alienee a charge for the amount applied by him in discharge of a prior mortgage on the alienated property.

Mussamat Bhaktawar Begam v. Mussamat Hasaini Khanam 26 M. L. J. 474. The decision of the Privy Council in

1. Reported at p. 478.
2. (1906) I. I. L. R. 30 M. 6.
3. (1910) I. L. R. 33 M. 334.

Mussamat Bakhtawar Begam v. *Mussamat Husaini Khanam* has an important bearing on a question of mortgage law over which the Courts in India can by no means be said to be unanimous. The question before their Lordships was as to the starting point of limitation for a suit for redemption, the mortgage being one by way of conditional sale and the mortgagee having been put into possession. The arrangement was that the sale would be cancelled on payment of the amount of consideration in nine years. The plaintiffs came to court alleging that as a matter of fact the mortgage amount had been completely satisfied by the usufruct, long before the nine years elapsed and that they were entitled to possession on the date on which the debt was so discharged. On the case so presented the Judicial Committee held that limitation under Art 148 commenced to run not from the expiry of the nine years but form the time when the debt was liquidated by the usufruct. In the course of their judgment, their Lordships make certain general observations as to the accrual of the right of redemption in the case of what may briefly be called 'term mortgages.' When a mortgage deed specifies a particular date for payment or fixes a particular term, the question whether or not the mortgagor can redeem before the date so fixed or before the term expires has often come up before the High courts. Though the question is and is always said to be, one of construction which must depend on the facts of each case, it cannot be denied that the Courts often start with some presumption as to whether the arrangement is *prima facie* for the benefit of the mortgagor or of the mortgagee and the indicia which they rely on in deciding the question of construction are more or less of an arbitrary character. The well-known rule that the right of redemption and the right of sale (or foreclosure) are co-extensive is sometimes regarded as the exception rather than the rule. And in some cases it has been suggested that the language of sections 60 and 62 of the Transfer of Property Act indicates a departure from previous decided cases. Where the usufructuary mortgage is of the kind described in section 62, clause (*a*), the Act expressly fixes the time when the mortgagor has the right to recover possession *i. e.*, when the usufruct has discharged the mortgage debt. In all other cases, whether a date or period is fixed or not, the Act only indicates the time for

redemption by the words "At any time after the principal money has become payable."

Among the decisions of the High Courts on the point reference may be made to *Sri Raja Sethrucherla Ramabhadra Raju Bahadur v. Sri Raja Vairicherla Serriya Narayana Raju Bahadur*[1]: *Tirugnana Sambhandha Pandara Sannadhi* v. *Nallatambi* [2], *Rose Ammal* v. *Rajarathnam Ammal* [3], *Radha Krishna Panda* v. *Madhava Naick* [4], and *Vishvendra Thirthaswami* v. *Vishnumurti Bhatta* [5], *Vadgir* v. *Vadgir* [6], *Purnachandra Sarma* v. *Peary Mohan Pal Das* [7].

The judgment under appeal proceeded on the view that the principal money becomes payable only "when the payment becomes obligatory on the mortgagor" *Husaini Khanam* v. *Husain Khan* [8] and the High Court added "the mere fact that the Plaintiff alleged that the mortgage debt was satisfied within the period (of nine years) does not affect the question." The Judicial Committee, in reversing the judgment of the High Court, make the following observations :—

"Ordinarily and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge the debt within the specified period and take back the property. Such a provision is usually to the advantage of the mortgagor. * * * * * If the fact be as the Plaintiffs allege that the mortgage debt became satisfied under the contract in 1838, the right to recover possession accrued then and the suit is clearly barred."

Achut Ramchandra v. Nagappa. I. L. R. 38 B. 41. While fully alive to the importance of putting a liberal interpretation upon enabling provisions in statutes we are not without doubts as to the correctness of some of the steps in the reasoning of the learned Judges. An appeal was presented on the last day of limitation on what was known to be an insufficient stamp and the pleader stating that he had not funds enough at the

1. (1880) I. L. R. 2. M. 314.
2. (1892) I. L. R. 16 M. 486.
3. (1898) I. L. R. 28 M. 88.
4. (1906) 17 M. L. J. 83.
5. (1908) 18 M. L. J. 236.
6. (1880) I. L. R. 5 B. 22.
7. (1912) I. L. R. 39 C. 828
8. (1907) I. L. R. 29 A. 474.

time to pay the proper stamp duty, asked for time to pay. The court refused to grant time and rejected the memorandum of appeal. Against this order there was an appeal to the High Court. The learned Judges hold that by virtue of S. 107 (2) of the C. P. C., O. VII, R. 11 (c) is applicable to appeals also and that under O. VII, R. 11 (c) the party is entitled *as of right* to demand from the Court that some time shall be allowed to him to pay up the deficient court fee, (the italics are ours). And they further point out that except under O. VII, R. 11 (c) there is no power in the Court to *reject* the memorandum of appeal. This would have sufficed to dispose of the actual question raised in the appeal. The learned judges however proceed to make some observations with reference to S. 149 of the code and the operation of the law of limitation in such cases. Emphasising the distinction between the obligation imposed by the law of limitation and that imposed by the Court Fees Act, they suggest that the Legislature might have adopted the principle that where the plaintiff or appellant was within time in the actual presentation of his plaint or memorandum of appeal, he should be entitled to some further time for payment of Court Fees. This view seems to us to require further consideration. It was pressed upon the learned judges that the view of an extension of time *as of right* was inconsistent with S. 149 of the code, which leaves the question of extension to the *discretion* of the court. We are not convinced that the argument is sufficiently met by the observation that in the case of a plaint or memorandum of appeal the discretion must be exercised in accordance with O. VII, R. 11 (c), for admittedly that provision gives the court no discretion as to the fact of extension but only as to the period of time. The learned Judges say that when the requisite fee is paid within the time fixed under O. VII, R. 11 (c), S. 149 would come into play and retrospectively validate the plaint or memorandum of appeal. We venture to doubt whether S. 149 can apply to a case where the court has no discretion to refuse to extend the time. Comparing this section with S. 582 (*A*) of the former Code, the learned Judges advert to the absence in S. 149 of any restriction as to the insufficiency being caused by mistake and infer that by the new provision the court was intended to have a free and unshackled discretion in the matter. We would however draw attention to what appears to be a significant difference between the scheme of S. 582 (*A*) and

S. 149. Under S. 582-*A* the validation was declared by the statute itself without any question of the discretion of the court, the only condition being that the deficient stamp duty should be paid up within a time to be fixed by the court'. But under S. 149 it is left to the discretion of the court to decide *whether or not* a person is to be allowed to make good the deficient court fee and it is only when such payment is allowed and made, that the validation clause will apply. It cannot therefore be assumed that so far as a memorandum of appeal is concerned, S. 149 necessarily places an appellant on a better footing in all respects than S. 582-*A* for the effect of S. 149 will depend upon how the court exercises its discretion, whereas under S. 582-*A* his right was practically absolute in the limited class of cases covered by that section.

Assuming that O. VII, R. 11 (*c*) will apply to a memorandum of appeal but that an extension of time allowed under it will not fall within S. 149, the question will arise as to the operation of the law of limitation in cases where an insufficiently stamped memorandum is presented on the last day. The preponderence of authority is no doubt in favour of the view that the first presentation is good for the purpose of limitation though the memorandum was not properly stamped; but if neither S. 149 of the Code nor. S. 28 of the Court Fees Act is to be applicable to the case, it is difficult to see how the Court can act upon a memorandum so presented.

MOitheensa Rowthan *v.* Apsa Bivi : I. L. R. 36 M. 194. This case raises a point of interest as to improvements. A purchaser in Court sale effected improvements while in possession. The question was whether he was entitled to be re-imbursed the cost of those improvements when his sale was set aside. Their lordships held he was. O. XXI, R. 93 permits the refund of the purchase money in all cases where the sale is set aside. It does not provide for anything more. Notwithstanding this omission, Phear J. held in *Morgan* v. *Abdul Hye* [1] that the Court had power to order reimbursement of money laid out on the estate. In a case in *Musadee Mahomed Casum Sherajee* v. *Meerja Aly Mahomed Shoosty* [2] their Lordships of the Privy Council say that where a person has legal title and it is pleaded in equity to be void, the Court has power to order payment for improvements *i.e*,, in cases coming within S. 41 of the Specific

1. (1854) 6 M. I. A. 27. 2. (1876) 23 W. R. 393.

Relief Act. This power seems to be wider than the power conferred by S. 51 of the Transfer of Property Act in that good faith does not seem to be required. It may be a question whether the wider rule enunciated in 6 M. I. A. 27 is not the proper one to be applied to cases where a Court sale is set aside. Their Lordships do not decide the point as on the facts, their Lordships found there was good faith. Though there is a distinction between stranger purchasers and decree-holder purchasers, one does not see why the latter should be disallowed the cost of improvement, effected by them, when a purchaser whose sale is liable to be set aside on the ground of fraud should be allowed for his. There might be some difference in principle between cases where the sale is wholly void and where it is only voidable. There was a further complication in this case in that the application was not made to the court which set aside the sale but a suit was brought to recover the value of improvements. Apart from cases where there is a statutory duty cast on the defendant to effect improvements or to pay for them, a suit does not ordinarily lie for their value and the right can only be set up by way of defence. In cases coming under S. 41 of the Specific Relief Act or S. 51 of the Transfer of Property Act it is clear that improvements cannot be the foundation of a separate claim as it would have been open to the party claiming their value to set up the claim in defence. The principle of the rule that the right is only pleadable in defence, in so far as it can be said to be founded on reason, is that a party should not be made to pay for improvements when he does not want the property. But where he has made his election to take the property and there is no rule of pleading in the way there does not seem to be any good ground why relief should be refused. There is no rule of pleading which prevents a person from suing for a relief which he could have got by setting up the claim by way of defence in the executing court. If the old view that the auction purchaser could recover his money by suit is still good law *a fortiori* his claim for improvements should be allowable in suit. One cannot deny however that piecemeal adjudication in this way might greatly embarass the court and there is something to be said for the view that a party should be put to his election to get all his reliefs in the executing court or by suit.